STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v.

ROBERT EARL HAWKINS
Defendant-Appellant.
_____/

MSC No. 161529
COA No. 352569
CC No. 02-000893-FC

Brief of Amicus Curiae Robert Earl Hawkins In Support of John Antonio Poole

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Amicus, "Yes."

II. SHOULD THE UNITED STATES SUPREME COURT'S DECISIONS IN MILLER AND MONTGOMERY SHOULD BE APPLIED TO DEFENDANTS WHO WERE OVER 17 YEARS OLD AT THE TIME THEY COMMITTED THEIR CRIME AND WHO WERE CONVICTED OF MURDER AND SENTENCED TO MANDATORY LIFE WITHOUT PAROLE?

Amicus, "Yes."

INTEREST AND IDENTITY OF AMICUS CURIAE

In 1996, Robert Earl Hawkins received a mandatory sentences of life without parole for a homicide when he was just 20-years-old. In recent research, it shows that young adults, like Mr. Hawkins, possess the same adolescent characteristic that the United States Supreme has determined reduced criminal culpability, mandatory like without parole sentences for this population.

SUMMARY OF THE ARGUMENT

In Miller v Alabama, the United States Supreme Court ruled that mandatory life without parole sentences are unconstitutional for individual who were juveniles at the time of their offenses under the Eighth Amendment's prohibit on cruel and unusual punishment. 567 US 460, 465; 132 S Ct 2455; 183 L Ed 2d 497 (2012). The Court, relying on the same underlying scientific research used to bar the death penalty for juveniles, held that children are less culpable than their adult counterparts because of their immaturity, impetuosity, susceptibility to peer influence, and greater capacity for change. Id. Further research now indicates that young people retain these characteristics beyond age 18. Because young adults possess the same adolescent characteristic that the Supreme Court has determined reduce criminal culpability, mandatory life without parole sentences for this population are

also disproportionate under both Eighth Amendment and Article 1, sec 16 of the Michigan Constitution. This Court should therefore grant Mr. Poole's application for leave to appeals and extend Miller and Montgomery's protections to defendants who were under 21-year-old at the time of the offense was committed.

I. MR. POOLE'S SUCCESSIVE MOTION IS "BASED ON A RETROACTIVE CHANGE IN THE LAW" UNDER MCR 6.502(G)(2) EVEN IF MILLER DOES NOT AUTOMATICALLY ENTITLE HIM TO RELIEF.

The Michigan Court Rules, MCR 6.500 et seq., set forth the process for post-appeal review of a defendant's judgment or sentence in criminal cases. MCR 6.501. A defendant is generally entitled to file only one motion for relief from judgment. MCR 6.502(G)(1). The court is to "return without filing any successive motions" and a defendant is prohibit from appealing the denial or rejection of a successive motion. Id. There are two exceptions to this rule, however--a defendant may file a successive motion if it is "based on a retroactive change in law that occurred after the first motion for relief from judgment or a claim of new evidence that was not discovered before the first such motion. MCR 6.502(G)(2).

Here, it is undeniable that Miller constitutes a "retroactive change in law"--the U.S. Supreme Court has expressly said so. See Montgomery v Louisiana, 136 S Ct 718;

193 L Ed 2d 599 (2016). As Justice Clement acknowledge this in her concurring opinion in People v Manning, 502 Mich 1033; 951 NW2d 905 (2020)(Clement, J., Markham and Zahra, JJ., join the statement of Clement):

> The most relevant exception is that a defendant may file a successive motion if it is "based on a retroactive change in that law occurred after the first motion for relief from judgment . . . ." MCR 6.502(G)(2). There is clearly a retroactive change in law here. Montgomery v Louisiana, 577 US US ___; 136 S Ct 718; 193 L Ed 2d 599 (2016), held that Miller announced a new rule that applies retroactively. Id. at ___; 136 S Ct 732 ("Miller announced a substantive rule that is retroactive in cases on collateral review.")

Also, nowhere does the language of MCR 6.502(G)(2) require Mr. Poole to show any entitlement to relief on the merits at filing stage. MCR 6.502(G)(2) and 6.508(D) as two distinct questions. First, MCR 6.502(G)(2) presents a "gateway" question that effectively opens the door to a successive motion: is the motion based on a retroactive change in law or newly-discovered evidence? Once successive motion is filed, MCR 6.508(D) goes on to as a second question: is the defendant entitled to relief?

Given this structure, it would make no sense to require a defendant to show he is automatically entitled to relief on the merits at the initial filing stage under MCR 6.502(G)(2). If that were the case, any defendant permitted to file a successive motion would necessarily prevail under MCR 6.508(D). A defendant required t show that a retroactive rule

applies to him at the filing stage. Under a proper reading, a defendant who established an exception to the successive-motion bar under MCR 6.502(G)(2) is not automatically entitled to relief: he merely proceeds past the filing stage and moves on the next stage of review.

A defendant who presents an argument regarding the constitutionality of his sentence under the retroavtive rule announced in Miller, should not be prevented from filing or appealing it. Any other reading of MCR 6.502(G)(2) would not only be inconsistent with the plain language of the rule, it would deprive Mr. Poole of an opportunity to be heard on his constitutional claims.

Mr. Poole has presented his argument under the retroactive rule in Miller. Regardless of the ultimate merits of that claim, his successive motion is undoubtedly "based on a retroactive change in the law" and he should not be prevented from filing or appealing it.

II. THE UNITED STATES SUPREME COURT'S DECISION IN MILLER AND MONTGOMERY SHOULD BE APPLIED TO DEFENDANTS WHO WERE OVER 17 YEARS OLD AT THE TIME THEY COMMITTED THEIR CRIME AND WHO WERE CONVICTED OF MURDER AND SENTENCED TO MANDATORY LIFE WITHOUT PAROLE.

The United Stares Supreme Court constantly ruled that children are "constitutionally different from adults for purposes of sentencing" and are categorically "less deserving of the most severe punishment." Miller, 567 US at 471. In Roper v Simmons, the Court held that imposing the death penalty on children violates the Eighth Amendment's prohibition on cruel unusual punishments. 542 US at 568. A few years later, in Graham v Florida, it held that the Eighth Amendment categorically "prohibits the imposition of a life without parole sentence on juvenile offender who did not commit homicide." 560 US at 82. And in Miller, it held that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison with possibility of parole for juvenile offenders." 567 US at 479.

The Court in Roper, Graham, and Miller, relied on three key developmental characteristics of youth in reaching its conclusions: (1) youth's lack of maturity, impulsivity, and impetuosity; (2) youth's susceptibility to outside influences;

and (3) youth's capacity for change. See Montgomery, 136 S S Ct 718, quoting Miller, 567 US at 471. Because of these developmental differences, juvenile defendants are less culpable; their "conduct is not as morally reprehensible as that of an adult," Roper, 543 US at 570, quoting Thompson v Oklahoma, 487 US 815, 835; 108 S Ct 2687; 101 L Ed 2d 702 (1988)(plurality opinion), making them "less deserving of the most severe punishment," Miller, 567 US at 471, quoting Graham, 560 US at 68. Current research now shows that young adult, especially between ages 18-25, share these same physiological and psychological traits, making them less culpable and thus less deserving of the most serious punishment.

In recent years, empirical research in neurobiology and developmental psychology has shown that the "hallmark features of youth's continued beyond the age of 18 and into a person's mid-twenties. Scott et al., Young Adulthood as a Transitional Legal category: Science, Social Change, and Justice Policy, 85 Ford L Rev 641, 653 (2016)("It is clear that psychological and neurobiological development that characterizes adolescence continues into the mid-twenties."); see also Beaulieu & Lebel, longitufinal Development of Human Brain Wiring Continues from Children into Adulthood, 27 J Neuroscience 31 (2011). One widely cited study traced the brain development of 5,000 children and found that their brains were not fully mature until they were at least 25 years old. Dosenbach et al., Prediction of Individual Brain Maturity Using fMRI, 329 Sci 1358-59 (2010). In particular, the development of the

prefrontal cortex--which plays a keep role in "high-order cognitive functions" such as "planning ahead, weighing risks and rewords, and making complicated decisions" --continues into a person's early twenties. Monahan et al., Juvenile Policy and Practice: A Developmental Perspective, 44 Crime J 557, 582 (2015).

This research confirms that 18-25 year olds are akin to children then they are to fully mature adults. They "are more likely than somewhat older adults to be impulsive, sensation seeking, and sensitive to peer influence in ways that influence their criminal conduct." Icenogle et al., Adolescents' Cognitive Capacity Researches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a "Maturity Gap" in Multinational, Cross-Sectional Sample, 43 L & Hum Beh 69, 83 (2019); see also, e.g., Michaels, A Decent Proposal: Exempting Eighteen- to Twenty-Years-Olds From the Death Penalty, 40 NYU Rev L & Soc Change 139, 163 (2016)(noting that "peer pressure towards antisocial behaviors continue[s] to have an important influence" in emerging adults ages 18 to 25). They show "diminished cognitive capacity, similar to that of adolescents, under brief and prolonged negative emotional arousal." Cohen et al., When Does a Juvenile Become an Adult? Implications for Law and Policy, 88 Temple L Rev 769, 786 (2016). And the period of "emerging adulthood" is a time of peak risk behavior. Arnett,Emerging Adulthood: A Theory of Development From the Late Teens Through the Twenties, 55 Am Psychol 469, 475 (2000); see also, e.g., Gardner & Steinberg, Peer Influence

and Risk Taking, risk Preference, and Risky Decision Making, 41 Dev Psychol 525, 631-32 (2005)(finding that adolescents (13-16) and youths (ages 18-22) "were more oriented toward risk than were adults" and that "peer pressure had a greater impact on risk orientation" among both groups as compared to adults).

The very same kind of scientific research that led Miller Court to conclude that child are categorically less culpable for their crimes likewise applies to young adults like Mr. Hawkins, who was 20 years old. See Young Adulthood as a Transitional Legal category, 85 Ford L Rev at 662 (noting that developmental scientific research supports presumption that mandatory minimum adult sentencing regimes should exclude young adult offenders"); Adolescents' Cognitive Capacity, 43 L & Hum Beh at 83 (noting that "teens--and young adults--are relatively less likely to have the self-restraint necessary to deserve the privileges and penalties we reserve for people we judge to be full responsible for their behavior"). Indeed, the American Bar Association, ABA Resolution 111: Death Penalty Due Process Review Project Section of Civil Rights and Social Justice to the House of Delegates (February 2018), p 6.

As to the characteristic identified by Roper Court that youth's lack of maturity, impulsivity and impetuosity, Dr. Steinberg explain in Cruz v United States, "that late adolescents still show problems with impulse control and self-regulation and heightened sensation-seeking, which would make them in those respect more similar to somewhat younger people than to older people." 2018 EL 1541898 (D

Conn)(No. 3:11-cv-00787) *6, overturned, Cruz v United States, 826 Fed Appx 49 (CA 2, Sept. 11, 2020)(Eighth Amendment did not forbid a mandatory life sentence for a defendant who was 18 at the time of his crime.)(The government or the Second Cir. of the Court of Appeals did not taken issue with Professor Steinberg's scientific opinion on these matters.) He testified that "impulse control is still developing during the late adolescent years from 10 to the early-- or mid-20s." Id.

The second characteristic that juvenile are more vulnerable or susceptible to negative influences and outside pressure, Dr. Steinberg stated "that the ability to resist peer pressure is till developing during late adolescent [, and] susceptible to peer pressure is higher in late adolescence than in adulthood, but slightly lower than in middle adolescence ." Id. at 64. According to his research, susceptible to peer pressure is still developing up to the age 24. Id. at 65.

Finally, on the third characteristic of youth identified by Roper--that a juvenile's personality traits are not as fixed--Dr. Steinberg testified "that people in late adolescence are, like 17-year-olds, more capable of change than are adults. Id.

In light of the evolving scientific evidence that late adolescents are just as immature, reckless, and impulsive as younger adolescents, the reasoning in Miller applies equally to them. Like young adolescents, 18 to 25 year olds have "diminished culpability and greater prospects for reform,: Miller, 567 US at 471. Their "distinctive attributes of youth"

diminish the penological justifications for imposing the harshest sentences" on them, "even when they commit terrible crimes." Id. at 472.

The Eighth Amendment requires courts to consider the scientific consensus on adolescent development in determining the constitutionality of mandatory life without parole for 18 to 25 years olds. As the U.S. Supreme Court has instructed, the Eighth Amendment "acquire[s] meaning as public opinion becomes enlightened by the humane justice." Hall v Florida, 572 US 701, 708; 134 S CT 1986; 188 L Ed 2d 1007 (2014). In Atkins v Virginia, the U.S. Supreme Court held that the Eighth Amendment prohibits imposition of the death penalty on intellectually disabled individuals. 526 US at 321. In Hall v Florida 572 US 701, the U.S. Supreme Court invalidated a Florida statute requiring an IQ score of 70 or lower before permitting a capital defendant to present evidence of an intellectual disability to avoid the death penalty. The Court noted that the Florida statute was inconsistent with "established medical practice" because it took an IQ score as conclusive evidence of intellectual disability "when experts in the field would consider other evidence." Id. at 712. The Court further noted that "[i]n determining who qualifies as intellectually disabled, it is proper to consult the medical community's opinion." Id. at 710; see also Moore v Texas, 137 S Ct 1039, 1050, 1053; 197 L Ed 2d 416 (2017)(holding that in determining whether an offender has an intellectual disability for purposes of the Eighth Amendment, states must defer to the

"medical community's current standards" that reflect "improved understanding over time" and that the Texas court's consideration of the issue "deviated from prevailing clinical standards"). Similarly, here, the law must follow the science and recognized that 18 to 25-year-olds are entitled to the constitutional protections afforded to youth. Just as "[i]ntellectual with disability is a condition, not a number," Hall, 572 US at 723, "youth is more than a chronological fact," Miller, 567 US at 476.

There is nothing in Miller that prohibits this Court from holding mandatory life without parole unconstitutional for 18 to 25-year-olds. Indeed, In Matter of Monschke, 197 Wn. 2d 305; 482 P.3d 276 (Wash. Mar. 11, 2021), the Washington Supreme Court examined whether Article 1, sec. 14 of that State's constitution--which bars the infliction of "cruel punishment" prohibits the imposition of mandatory sentences of life without parole on 18, 19, and 20-year-olds. Looking to U.S. Supreme Court case law, Washington legislative enactments, and the latest neurologial science, the Washington Supreme Court concluded that:

> There is no meaningful cognitive difference between 17-year-olds and many 18-year-olds. When it comes to Miller's prohibition on mandatory LWOP sentences, there is no constitutional difference either. Just as courts must exercise discretion before sentencing a 17-year-olds to die in prison, so must they exercise the same discretion when sentencing an 18-, 19-, or 20-year-old.

Monschke, 197 Wn. at 329. The Court thus vacated the petitioners' sentences and remanded "each case for a new sentencing hearing at which the trial court must consider whether each defendant was subject to the mitigating qualities of youth." In doing so, the Washington Supreme Court extend Miller-type protections to 18, 19, and 20-year-olds.

Ultimately, if would be cruel and unusual to cling on an arbitrary line at the age 18 for purposes of imposing the harshest possible prison sentence when scientific evidence has shifted toward the recognition that 18 to 25-year-olds are not truly adults. Imposing a mandatory life without parole sentence on 18 to 25-year-olds "posses to great a risk disproportion punishment" and violates the Eighth Amendment. Miller, 567 US at 479.

This Court has confirmed that our constitution is "worded different from, and was ratified more than 171 years after," the Eighth Amendment to the U.S. Constitution. People v Bullock, 440 Mich 15, 27; 485 NW2d 886 (1992). Whereas the Eighth Amendment prohibits "cruel and Unusual punishment," our constitution bans "cruel or Unusual punishment." Id. at 30. This Court has held that our state constitution "provides greater protection against certain punishment than its federal counterpart" and has adopted a "broader test for proportionality than U.S. Supreme Court employs when interpreting the Eighth Amendment. People v Carp, 496 Mich Mich 440, 519; 852 NW2d 801 (2016), cert granted, judgment vacated by Carp v Michigan, 136 S Ct 1355; 194 L Ed 2d 339

(2016). Under our state constitution, a mandatory life without parole sentence for 18 to 25-year-olds are so disproportionate as to be "cruel or unusual." Cont 1963, art 1 sec. 16.

As the research grows, it has become indefensible to exclude young adults, who share the identical attributes of younger teens, from the required individualized sentencing and consideration of the mitigating qualities of youth. Mr. Hawkins was 20 years old when he received life without parole sentence. The rationale of Miller applies equally to defendants, like Mr. Hawkins, who were 20 at the time of their crime. Life without parole is the harshest sentence on a 20-year-olds---given all the U.S. Supreme Court has said about the mitigating qualities of youth and all that science now tells us about how young adolescents virtually indistinguishable from younger adolescents--is unonstitutional under both Const 1963, art 1, § 16 and the Eighth Amendment of the United States Constitution.

SUMMARY OF RELIEF

WHEREFORE, amicus curiae respectfully requests that this Honorable Court extend Miller and Montgomery's protection to defendants who were 18 to 21-years-old at the time they committed their crime and who were sentence to life without parole, and vacate those sentences and remand for a resentencing hearing.

Dated: 7/20/21

Respectfully submitted,

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